IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3408 with 3114 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD MUNICIPAL TRANSPORT SERVICE

Versus

AMIRULLAH SALIM ANSARI

Appearance:

1. Special Civil Application No. 3408 of 2004

MR HS MUNSHAW for Petitioner No. 1

MR KS ACHARYA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 29/03/2004

ORAL JUDGEMENT

Rule. Mr.M.K.Patel for Mr.Acharya for the respondent in SCA No.3408/04 and Mr.Munshaw for

respondent in SCA No.3114/04 waive service of rule on behalf of respective respondents. With the consent of Ld.counsel for the parties matters are taken up for final hearing today.

2. The short facts of the case are that the respondent workman was the employee of the petitioner corporation for about 28 years. He had undergone treatment for TB with Shardaben Chimanlal General Hospital of Ahmedabad Municipal Corporation during the period from 14.8.97 to 14.9.97 and the certificate for such purpose was also produced. It is the case of the petitioner that one bogus certificate of the Civil Hospital for the period from 17.9.97 to 17.11.1997 was produced for treatment by the respondent and the respondent on the basis of aforesaid certificates enjoyed leave and when it came to the knowledge of the petitioner chargesheet was issued to the respondent. It is the further case of the petitioner that the statement, dated 18.10.1999 of the respondent was recorded whereby the respondent confirmed the certificate and shown his willingness to deposit the amount which he had received on the basis of bogus certificate, namely of leave, treatment and other benefits. An inquiry was held and ultimately the IO as per report, dated 5.2.2001 concluded that the charges of malafide intention are not proved but the certificates are not genuine and the IO opined that if the amount is paid as per undertaking the charges are not proved. The disciplinary authority on the basis of said IO's report issued show cause notice before imposing the punishment, dated 20.2.2002. The said show cause notice is brought to the notice of the court by Mr.Munshaw during the course of hearing and in the said show cause notice the only basis is IO's report and his findings as if the charges are proved and no reasons are recorded for disagreement with the conclusion arrived at by the IO. It appears that ultimately thereafter on 7.2.02 the order has been passed for dismissing the respondent workman from service and the amount of PF and gratuity is not forfeited. The respondent challenged the said decision by raising dispute under I.D.Act which ultimately came to be referred to the labour court being Ref(LCA) No.609/02. The labour court, as per the award, dated 31.12.2003 directed for reinstatement without backwages and the said award, so far it relates to the ordering of reinstatement is challenged by the employer in SCA No.3408/04.

3. The very award, so far it relates to not awarding of backwages is challenged by the workman concerned by preferring SCA No.3114/04. For the sake of convenience,

since there are cross petitions, respective parties shall be described as employer and the workman hereinafter.

4. Heard Mr.Munshaw appearing for the employer in both petitions and Mr.Patel for Mr.Acharya appearing for concerned workman.

5. The contention raised on behalf of the employer by Mr.Munshaw is that the workman himself has admitted that he is ready to deposit the amount in case the certificate is not found genuine and that shows that the workman has produced the bogus certificate and has taken undue benefit and therefore the said ground is sufficient to dismiss the workman concerned from service. Mr.Munshaw also submitted that the IO did not give clear finding but in his submissions a vague finding was given that on the basis of material and more particularly the statement recorded of the workman concerned the only conclusion would be that the charges are proved and therefore the disciplinary authority was justified in imposing the punishment of dismissal. Mr.Munshaw also submitted that there are about 28 employees who are involved in similar scandal and they are dismissed from service and they have approached the labour court by filing references and they are pending. He submitted that the labour court has not properly considered the matter and therefore this court in exercise of powers under Article 227 of the Constitution should interfere and the order passed by the for reinstatement deserves to be quashed and set aside.

6. Mr.Patel for the respondent workman submitted interalia that the labour court should have also ordered for payment of backwages when the labour court found that the punishment of dismissal is illegal. However, he submitted that the workman on the contrary fairly declared before the court that he is doing agricultural work and taking two crops and therefore the labour court on that ground ought not have denied the payment of backwages. Mr.Patel, during the course of hearing, under the instructions of his client, submitted that the amount of Rs.11,752.58ps which was to be recovered on the basis of socalled certificate is already recovered by the employer and therefore it is not a matter where the workman has not abided by the undertaking of repayment of the amount. He therefore submitted that the award of the labour court deserves to be modified to the extent of awarding backwages to the concerned workman and the award passed by the labour court for ordering reinstatement does not deserve to be interfered with.

7. If the background of the case is considered, it is true that the statement of the workman is recorded on 18.10.1999 and in the same the workman has stated that from 14.8.97 to 16.9.97 he was in the treatment with Shardaben Hospital as TB patient and certificate for the said purpose is also produced with a view to resume duty on 17.9.97. Moreover, he has also stated that thereafter from 17.9.97 since his health was not well, he had undergone the treatment with Astodia TB Hospital and the said certificate is produced and he has confirmed that the said certificate is very certificate which bore the seal of Civil Hospital. The workman has also stated that he has not gone to Civil Hospital and if the certificate is found to be wrong he is ready to deposit the amount which he has received. The workman has also stated that he is not much literate and not aware and he has not paid any amount to anybody for getting the certificate and he has produced the proof for taking treatment. The IO in his report dated 5.2.2001 has considered all the material and ultimately concluded that "it can not be said that the charges levelled against the workman showing the intentional action are not proved." He has further observed that "at the same time it can be said that the certificates produced are wrong and the money of the institution are wrongly paid." He has further concluded that "therefore if the victim abides by the undertaking given during the preliminary inquiry, the charges are not proved, but if he does not abide by the undertaking the intention of the victim is clearly proved." It is not the case of the employer that the workman has not agreed to abide by the undertaking from the date of preliminary inquiry, and therefore, if such is the situation, the consequence would be that the charges are not proved as per report of IO and the said conclusion of the IO would continue to operate. The law on the point is settled in as much as it is open to the disciplinary authority to disagree with the finding or the opinion of the IO. However, at the same time, the requirement is that the disciplinary authority before issuance of show cause notice has to record the reasons for disagreement and the opportunity is required to be given to the workman concerned and thereafter it is open to the disciplinary authority to impose the punishment. If such process or procedure is not followed, the order for imposition of penalty would be vulnerable. In the present case, as observed earlier, in the notice issued to the workman concerned by the disciplinary authority no reasons for disagreement are recorded and on the contrary by referring the inquiry proceedings it has been mentioned that the charges are proved. Therefore, in my view, the order for imposition of punishment on the basis of IO's

report without recording reasons for disagreement shall not stand in the eye of law. The aforesaid view deserves to be taken because employer is a "State" within the meaning of Article 12 of the Constitution of India.

8. Further, the labour court while recording reasons in its award has found that when the charges were not proved before the IO, the action for imposition of punishment of dismissal was not warranted. The labour court has also recorded that the IO during the course of inquiry has found that out of three certificates two certificates are genuine and and the certificate issued by the Civil Hospital is not produced during the inquiry before the IO. The labour court has also recorded that there is no written evidence produced showing that the certificate is wrong. Therefore, the labour court concluded that the charges against the workman are not proved. As a consequence thereof, the labour court has ordered for reinstatement.

9. On the question of backwages the labour court has recorded that on the face of evidence of workman himself, it can not be said that the workman has remained unemployed and therefore the backwages are not awarded. In my view, even if the case for backwages is considered in a matter where the termination is held to be illegal, then also, it would be the discretion of the court to exercise power considering the facts and circumstances of the case. When the labour court has found on the basis of evidence produced on record, the petitioner was not unemployed, it can not be said that the discretion exercised by the labour court for not awarding backwages is so perverse which would attract the powers of this for interference under Article 227 of the Constitution of India.

10. Considering the above, it can not be said that the labour court has committed jurisdictional error or has exercised discretion so perversely while passing the final order for reinstatement without backwages. In my view considering the facts and circumstances of the case and the reasons recorded in the award if considered, it can be said that the labour court has exercised powers within its jurisdiction and discretion is also properly exercised.

11. In the result, the award passed by the labour court, dated 31.12.2003 which is impugned in both the

petitions does not deserve interference.

12. In the above circumstances, both the petitions are dismissed. Rule in each petition is discharged. Considering the facts and circumstances of the case, there shall be no order as to costs.

29.3.04 (JAYANT PATEL,J)